The respondent relied on paragraph 6 of Sir Thomas Lund's affidavit. In his evidence from the witness box, respondent said that it had never entered his head that what he was doing, amounted to conduct which was professionally improper and that he would certainly not have done it, had he realised this. He knew that police inquiries had been made concerning these transactions (the Attorney-General explained that questions arising under the Trades Licensing Ordinance had been investigated.) but the first he knew of possible disciplinary proceedings was when the rule *nisi* was served on him. He had thus had no previous opportunity of complying with any such requirement as is referred to in paragraph 6 of Sir Thomas Lund's affidavit. Through his counsel, he undertook not to act in this manner again and expressed his willingness to enter into such an undertaking in writing, if so required. Having regard to the action which Sir Thomas Lund has stated that the Law Society would take in similar circumstances, I do not consider that this is a case in which either of the penalties to which the respondent has rendered himself liable, should be imposed. I have recorded in this judgment that the respondent, through his counsel, has undertaken not to repeat this conduct and I consider that, in all the circumstances of the present case, this will suffice.

If this application had taken its normal course, I should have also made an order against the respondent for costs, but the parties have previously agreed that the respondent would not claim costs for the abortive hearing on 4th June last, if the Attorney-General did not claim his costs in connection with the remainder of the application. Having regard to the course these proceedings have taken, I consider this a reasonable arrangement in regard to costs. Therefore, I make no order as to costs.

Paragraph (g) of section 12 is in force in all the territories which propose to join Malaysia. It does seem advisable that, after Malaysia is established, the appropriate authorities, including the professional organisations, should consider whether paragraph (g) should be amended. If it has the meaning suggested in this judgment, it is possible that some members of the legal profession in these territories are not complying with the law controlling their profession. In any case, it is highly unsatisfactory that there should be so large a measure of doubt as to the meaning of the Ordinance in regard to one of the most important subjects with which it has to deal.

Order accordingly.

Solicitors: *Battenberg & Talma*

GOH CHOOI LEONG v. PUBLIC LIFE ASSURANCE CO. LTD.

[O.C.J. (Gill J.) September 14, 1963]
[K.L. — Civil Suit No. 153 of 1962]

Insurance—Non-disclosure of material fact—Avoidance of liability.

Contract—Insurance—When voidable.

The defendants in consideration of premiums paid and to be paid by the assured, one LCH since deceased, on a policy issued by them on May 6, 1960, agreed to insure his life in the sum of $10,000 and upon proof of his death to pay the said sum to his executors, administrators or assigns. The assured died on May 29, 1960 and the plaintiff, to whom the policy was assigned, by letter notified the defendants of the death of the assured on June 2 and forwarded to them the death certificate. In this action the plaintiff sought to recover the sum payable on the policy which the defendants failed to pay.

The defendants' case was that the contract was voidable and that they were not liable because the declaration by the assured on the faith of which the policy was issued contained false statements, misrepresentations and concealment and suppression of the truth. There was medical evidence that the assured had been treated for pulmonary tuberculosis and was warded in a Tuberculosis Ward in the Klang District Hospital from November 1958 to March 1959. However in his declaration when applying for the insurance in answer to the question, "Have you ever had advice about your heart or lung or for cough?" he said "No".

Held: (1) in view of the fact that the assured had not long before the date of the declaration been in Klang Hospital for treatment for pulmonary tuberculosis, his answer in the declaration was a deliberate lie;

(2) the contract of insurance was therefore voidable.

Case referred to:—

(1) *Rozanes* v. *Bowen* (1928) 32 Ll.L.R. 98, 102.

ACTION.

Khoo Eng Chin for the plaintiff.

N. A. Marjoribanks for the defendants.

Cur. Adv. Vult.

Gill J.: The defendants, by a policy of Insurance No. 7088 dated the 6th day of May, 1960 issued by them to one Lim Choo Hock (hereinafter called "the assured") in consideration of premiums paid and to be paid by the assured upon the terms mentioned in the policy, agreed to insure the life of the assured in the sum of ten thousand dollars and upon proof of his death to pay the said sum to his executors, administrators or assigns.

The assured, by a conditional assignment in writing dated the 26th day of May, 1960, assigned the said policy to the plaintiff. A copy of the said assignment was filed in the head office of the defendant company as specified in the policy on the 28th day of May, 1960.

The assured died on the 29th day of May, 1960 while the policy was in force. The plaintiff by letter dated 2nd June, 1960 duly notified the defendants of the death of the assured and forwarded to them a certificate relating to such death on the 9th day of June, 1960. The present

action by the plaintiff is to recover the sum of ten thousand dollars payable on the policy, which the defendants have failed to pay.

The defendants' case is that the contract is voidable, and that they are not liable, because the declaration in writing by the assured dated the 18th day of April, 1960, which he agreed should form an integral part of the life assurance contract and on the faith of which the policy sued on was issued, contained false statements, misrepresentations and concealment and suppression of the truth. They also contend that the plaintiff cannot claim under the conditional assignment because, the policy being made for the benefit of the wife of the assured and being declared payable in Singapore, the law of Singapore governs the contract under which law the policy created a trust in favour of the wife who never consented to the assignment and is alive and capable of enforcing the trust in her favour. They further say that no valid consideration moved from the plaintiff to the assured.

It was agreed at the trial that the burden of proof was on the defendants and that they had the right to begin. Mr. Marjoribanks opened the case for the defendants and referred to a number of authorities on the question of law. In my opinion the law governing this case is quite clear and if I do not refer to any of the authorities cited by Mr. Marjoribanks I hope I shall not be considered as lacking in courtesy.

The evidence for the defendants is simple, straightforward and very brief. Goh Kheng Khoo (D.W.1), the manager of the defendant company's branch in Kuala Lumpur and a duly appointed agent of the company, produced three documents from the company's records relating to the policy sued on. They are the application for assurance (D.1), the declaration by the assured (D.2) and a copy of Policy No. 7088 issued to the assured (D.3). He agreed under cross-examination that the conditional assignment by the assured dated 16th May, 1960, of which a copy was shown to him (P.4), was registered at the head office of the company in Singapore.

Dr. Lee Tuck Chong (D.W.2) gave evidence to say that he examined the assured on 18th April, 1960 and wrote down the answers given by the assured to the questions set out in the declaration. The assured signed the declaration, after it had been explained to him, in the presence of the witness who also signed it. The witness went on to say that the assured did not tell him that he had previously been treated for tuberculosis. If this fact had been disclosed, he would have asked for an X-ray.

Dr. (Mrs.) Leyden L. Velaskuez Cheah (D.W.3.) gave evidence to say that the assured was in Ward No. 3, a T.B. ward, of the District Hospital, Klang from 18th November, 1958 to 24th March, 1959 and that at the time of his admission into hospital he was suffering from pulmonary tuberculosis. While he was under treatment he was X-rayed. The X-ray photograph showed that the assured was suffering from extensive bi-lateral pulmonary tuberculosis. The records of the hospital did not show that the assured was at any time spitting or vomiting blood, although they showed that he had cough with sputum. There was no mention in the records of night sweats. This witness concluded her evidence by saying that the assured must have known that he was suffering from tuberculosis.

The evidence for the plaintiff is equally short. His own evidence is that the assured and and he were sworn brothers and that on 26th May, 1960 the assured signed a conditional assignment of Policy No. 7088 in his favour. Ng Geok Kwee, the wife of the assured, knew of the assignment which was made by the assured in his favour and raised no objection to it. He also said that he paid no money for the assignment.

Ng Geok Kwee (P.W.2) said that she was the widow of the assured. She knew the plaintiff as a sworn brother of her deceased husband. She further said that she knew of a life insurance policy which was taken out by her late husband in 1960. Before her husband's death the policy was with him, but later he gave it to the plaintiff. She was consulted and she consented to her husband giving the policy to the plaintiff.

It is quite clear on the pleadings and from the evidence that the only real issue in this case is whether there was non-disclosure by the assured at the time he took out the policy. It has been conceded by Mr. Khoo on behalf of the plaintiff that the declaration of Lim Choo Hock (P.2) was the basis of the contract of insurance. It has also been conceded by him that the answers to the questions in the declaration amounted to a warranty, but he has argued that the burden of proving non-disclosure is on the defendant company. His contention is that on the evidence in this case the defendants have failed to prove non-disclosure on which their entire case rests. I do not agree.

The evidence of Dr. Lee Tuck Chong quite clearly shows that the declaration was explained to the assured and that the answers entered therein were in fact the answers given by the assured. This would particularly appear to be so from the answer to item 8 of the declaration. Under item 9 the question was: "Have you ever had advice about your heart or lungs or for cough?" The answer of the assured was: "No." In my opinion this answer was a deliberate lie, in view of the fact that the assured had not long before the date of the declaration been in Klang

Hospital for treatment from pulmonary tuberculosis. That being so, his contract of insurance with the defendant company is voidable. It is trite law that a contract of insurance is a contract *uberrimae fidei* which can be avoided for non-disclosure of material facts. If any authority is required for this proposition it is to be found in the following passage in the judgment of Scrutton L.J. in *Rozanes* v. *Bowen* [1]:

"As the underwriter knows nothing and the man who comes to him to ask him to insure knows everything, it is the duty of the assured, the man who desires to have a policy, to make a full disclosure to the underwriters without being asked of all the material circumstances, because the underwriters know nothing and the assured knows everything. This is expressed by saying that it is a contract of the utmost good faith — *uberrima fides*."

In the circumstances I feel I have no option but to dismiss the action with costs, and make an order accordingly.

Although it is not necessary for me to decide on the rights of the plaintiff under the conditional assignment, I must say that in the light of the evidence of the widow of the deceased assured the defendants would not have succeeded in having the suit dismissed on this ground.

Action dismissed.

Solicitors: *Khoo Eng Chin & Co.; Lovelace & Hastings.*

AUGUSTINE v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong J.) September 26, 1963]

[K.L. — Criminal Appeal No. 50 of 1963]

Criminal Procedure—Judgment—Duty of magistrate to give proper grounds—Duty to state findings of facts.

Except in the most straightforward type of cases, where the facts clearly establish all the necessary ingredients of an offence, it is the duty of the magistrate to state at least what were his finding of fact.

Case referred to:—

(1) *Oliver* v. *Ahsman* [1961] 3 W.L.R. 669, 682.

CRIMINAL APPEAL.

B. Kaher Singh for the appellant.

Gunn Chit Tuan (Deputy Public Prosecutor) for the respondent.

Ong J.: The appellant was charged in the Magistrate's Court, Kuala Lumpur under section 385 of the Penal Code, for putting one Tan Siew Hui in fear of hurt to his person on October 18, 1962 in order to the committing of extortion of an unspecified sum of money. On June 26, 1963 he was sentenced, upon conviction, to 6 months' imprisonment and one stroke of the rattan. He has now appealed against the conviction and sentence.

The grounds of judgment were given, after notice of appeal, on July 3, 1963 in four lines, as follows:

"The accused was charged with attempted extortion under section 385 Penal Code and after hearing all the evidence I found that there were clear evidence of an attempt which failed. Defence has not raised any doubts."

I do not consider the simple *ipse dixit* of the Magistrate sufficient to constitute proper grounds of judgment. It is not enough to use the words of Shelley, "I cannot argue, I can only feel," as the foundation of a judgment (see Holroyd Pearce L.J. in *Oliver* v. *Ashman* [1]). Except in the most straightforward type of cases, where the facts clearly establish all the necessary ingredients of an offence, it is the duty of the magistrate to state at least what were his findings of fact. The learned magistrate has failed to do anything of the sort, although he had had seven days in which to write his judgment and innumerable precedents exist showing what his predecessors had invariably done. Surely past magistrates were not indulging in literary compositions merely for the edification of judges and others for whom the grounds of judgment were written.

In this case, the appellant admitted that he had punched the complainant two days before the police report was made. Such being the case, there was good reason for the complainant having an *animus* against the appellant, and the events of November 1 and 2 leading up to the arrest were in truth more consistent with the appellant's innocence than his guilt of the allegations made against him.

For the above reason I am satisfied that the judgment was against the weight of evidence, and I therefore set aside the conviction and sentence.

Conviction and sentence set aside.

Solicitors: *Kaher Singh & Karam.*

THE PRUDENTIAL ASSURANCE CO. LTD. v. KOH NAM YONG

[D.C.A. (Buttrose, Chua & Kulasekaram JJ.) October 25, 1963]

[Singapore — District Court Appeal No. 31 of 1962]

Employment—Holidays—Work on—"Double the ordinary rate of salary"—Claims for—Clerks Employment Ordinance, 1957 ss.36(2) & 56—Scheme of Ordinance considered.

Under section 36(2) of the Clerks Employment Ordinance, 1957, any employee who is required to work on a holiday is entitled to double the ordinary rate of salary in addition to his salary.

Case referred to:—

(1) *Tara Singh* v. *Chairman, Sailors' Institute Committee, Singapore* [1959] M.L.J. 1.

DISTRICT COURT APPEAL.

Punch Coomaraswamy for the appellant.

David Marshall for the respondent.

Buttrose J.: This is an appeal from an Order of the Assistant Commissioner of Labour directing the appellant to pay to the Commissioner for Labour on behalf of the respondent